

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.308 OF 2007**

Bharti Airtel Limited .. Petitioner.

Versus

K.K.Enterprises & Ors. .. Respondents.

Mr.Amit Jamsandekar with Mr.Singh i/b.M/s.D.H.Law
Associates for petitioner.

Mr.A.M.Saraogi for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th September, 2007.

P.C.:

1. This petition by the petitioner Bharti Airtel Limited, seeks the following reliefs :-

a) That pending the hearing and final disposal of the Arbitral proceedings, respondents be directed to deposit all the property including the SIM cards as per the list, Ex."M" and other promotional material etc. of the petitioner, lying with the respondents be seized by and under

the order and direction of this Hon'ble Court with the assistance of the police, if necessary and deposited with the Prothonotary and Senior Master of this Hon'ble Court.

b) That pending the hearing and final disposal of the Arbitral proceedings, the respondents, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with, disposing off or alienating or destroying the SIM cards listed in the promotional material or any other property of the petitioner lying with the respondents."

2. The apprehension that was expressed by the petitioners when the matter was moved for running ad-interim ex-parte orders on 3rd August, 2007 has been duly noted in my order dated 3rd August, 2007. I need not repeat those observations.

3. After the petition was duly served, Mr.Saraogi has appeared for the respondents.

4. The petition is invoking this Court's powers under

Section 9 of the Arbitration and Conciliation Act, 1996.

5. In response to the arbitration petition, a reply has been filed by the respondents, wherein after denying all the contentions, it is stated that 1008 SIM cards in are in possession of the respondents.

6. It is in these circumstances that after the arguments concluded, on the last occasion, I called upon Mr.Saraogi to take instructions as to whether all details of the SIM cards which are lost / stolen and those which are presently lying with the respondents at their premises be disclosed.

7. Mr.Saraogi after obtaining instructions from the respondents states that the details which are forwarded in a statement today, disclose that 1008 SIM cards are lying with the respondents, whereas 1025 have been stolen and a F.I.R. has been duly lodged on 31st March, 2007 at the local police station. He submits that investigations are in progress and the allegation of the respondents is that the staff of the petitioner is involved in the said theft.

8. Mr.Saraogi after taking further instructions from the respondent No.2, who is present in Court, makes a

statement that insofar as SIM cards, namely, 1008 which are lying with the respondents, the respondents are ready and willing to deposit the same in a sealed box in this Court by Tuesday i.e. 11th September, 2007. Mr.Saraogi, however, states that the Arbitral Tribunal has already been moved. The deposit should, therefore be without prejudice to the rights and contentions of the respondents before the Arbitral Tribunal and reserving liberty to apply for modification of this order or further interim measures.

9. The petitioner states that the ad-interim order does not protect sufficiently their rights and they are entitled to the said SIM cards being returned to them. Mr.Singh and Mr.Jamsandekar submit that the terms of the Agreement are clear. The SIM cards are the property of the petitioner, no rights are being created in the franchise in respect of these SIM cards. There is a bar / prohibition against alienation of these cards nor their parting with is permitted. The plain duty of the Franchise would be to return these cards. I do not wish to go into these aspects as they touch upon the obligations in the Franchise Agreement. Whether the respondents are in breach or they have duly complied with the same so also whether the petitioners are entitled to

appropriate reliefs in terms of the Agreement, are all matters which are best left for decision of the Arbitrator. Once the Arbitral Tribunal is constituted, it is for the parties to make such submissions as are permissible in law on this aspect.

10. The arbitration petition is disposed of by continuing an ad-interim order till Tuesday i.e. 11th September, 2007 or till such time, respondents deposit these 1008 SIM cards in a sealed box with the Prothonotary and Senior Master of this Court.

11. The Prothonotary and Senior Master to keep the said sealed box until such orders are made with regard thereto by the Arbitral Tribunal or by this Court.

12. Parties are agreeable to the sealed box being opened in the presence of the Prothonotary and Senior Master or Officer authorised by her for inspection of these SIM cards.

13. Mr.Saraogi states that the SIM cards are lying at the premises, namely, Kesaria Telecom, Abme Wadi Road, No.22, Wagle Estate, Thane (W) - 400 604 and would be deposited before the date, specified in the Court's order.

Needless to state that if the same are not deposited as directed, then, in addition to applying for such interim measures with regard thereto, the petitioners are at liberty to move this Court, complaining of breach or violation of this direction and for dealing with the respondents appropriately under the Contempt of Courts Act, 1971. The list/details of the SIM cards which are set out in a statement is taken on record and marked "X" for identification.

14. This order is passed without prejudice to the rights and contentions of both sides and equally of the petitioner, who can apply for such interim measures as are permissible in law. Arbitration petition disposed of. No order as to costs.

(S.C.Dharmadhikari, J.)